

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CA0508
)	EEOC NO.: 21BA82897
JUSTINA COLEMAN,)	HUD NO.: N/A
)	ALS NO.: 09-0394
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Justina Coleman's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CA0508; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and Addendum to the Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On August 21, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged her employer, Miramed Revenue Group, LLC ("Employer") violated § 2-102(A) of the Illinois Human Rights Act (the "Act"). Specifically, the Petitioner alleged the Employer discharged her on June 6, 2008, because of her age, 54. On July 13, 2009, the Respondent dismissed the charge for lack of substantial evidence. The Petitioner's deadline for filing her Request was August 17, 2009. The Petitioner filed a timely Request on July 27, 2009, and a timely addendum to her Request on August 12, 2009.
2. The undisputed evidence in the investigation file shows the Petitioner worked for the Employer as a Data Entry Clerk for 14 years prior to her discharge on June 6, 2008. The Employer's stated reason for discharging her was that from April 24, 2008, until June 3, 2008, the Petitioner violated the Employee Code of Conduct by engaging in unacceptable and unprofessional behavior.
3. Jill Schaeffer is the Employer's Training Recruitment Manager. Cathy Stark was the Petitioner's supervisor.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On April 24, 2008, unidentified co-workers complained to Schaeffer about the Petitioner's conduct in the bathroom, alleging that she was behaving in a manner that made them uncomfortable.
5. On May 20, 2008, a female co-worker complained to Stark that the Petitioner would cough on the employee time clock and the employee hand sanitizer unit, allegedly to cause her co-workers to become ill. On May 21, 2008, this same co-worker sent an e-mail to Stark complaining that the Petitioner allegedly coughed on her hand and then placed her hand on the time clock.
6. On May 21, 2008, a male co-worker complained to Stark that the Petitioner had been coughing directly on a hand scanner for a week, which he believed was unsanitary, and which also disturbed other co-workers. On that same day, another female co-worker complained the Petitioner was engaging in unsanitary behavior by coughing on her desk on purpose. The co-worker complained that she did become sick.
7. On June 3, 2008, a female co-worker complained to Stark that the Petitioner had been engaging in unsettling behavior, namely taunting and harassing her by standing at her doorway, looking in her cubicle/office area, and then laughing without saying anything. This co-worker complained that the Petitioner also would stand in the middle of the co-worker's workspace, stare directly at her, and then burst into laughter.
8. The Respondent's file contains e-mails from five of the Petitioner's co-workers, in which the co-workers complained to the Petitioner's superiors about her alleged inappropriate conduct between April 24, 2008, and June 3, 2008.
9. On June 6, 2008, the Employer terminated the Petitioner for unacceptable conduct.
10. In her charge, the Petitioner contended the Employer discharged her because of her age. She alleged that a similarly situated younger co-worker, age 23, was not discharged for engaging in similar behavior.
11. In her Request and her Addendum, the Petitioner contends that between 2006 and 2008, over 20 employees aged 45-55 were discharged by the Employer. She states she gave a list of those former employees to the Respondent, but they were never interviewed by the Respondent. Further, she denies that she ever engaged in any misconduct or inappropriate behavior.
12. In its response, the Respondent asks the Commission to sustain its dismissal for lack of substantial evidence. The Respondent argues the Petitioner did not present substantial evidence of a *prima facie* case of age discrimination because there was no substantial evidence that similarly situated younger employees were treated more favorably under similar circumstances. Further, there was no substantial evidence the Employer's articulated reason for discharging the Petitioner was a pretext for age discrimination.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all counts of the charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

First, the Commission agrees there is no substantial evidence of a *prima facie* case of age discrimination. A *prima facie* case requires some proof that the Petitioner falls within a protected class, she was performing her job satisfactorily, she was subjected to an adverse action, and the Employer treated a similarly situated younger employee more favorably under similar circumstances. See Marinelli v. HumanRights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

The Petitioner points to a 23-year-old former employee as a comparable. In that case, the Employer had issued the 23-year-old former employee a written warning on July 9, 2007, for misusing vacation time. On November 19, 2007, the former employee submitted two weeks notice to the Employer of her resignation, official December 2, 2007. However, the Employer terminated her early, on November 29, 2007, because she was coming into work sporadically during her final week.

The Petitioner does not demonstrate how this 23-year-old former employee is similarly situated to her. The Commission finds no support for the Petitioner's contention that an employee who allegedly engages in disruptive, unsanitary, and possibly intimidating behavior toward co-workers over a two-month period of time is similarly situated to an employee who misuses vacation time on one occasion. Given the difference in the nature and severity of the alleged misconduct, the Commission does not find that the 23-year-old former employee was similarly situated to the Petitioner.

Second, assuming *arguendo* the Petitioner established a *prima facie* case, the Employer put forth a legitimate, non-discriminatory reason for its action. There is no substantial evidence of pretext. Rather, there is evidence in the file that for approximately two months prior to her discharge, various co-workers complained to the Employer about the Petitioner's allegedly disruptive and disturbing behavior in the workplace.

Although the Petitioner denies she engaged in any misconduct, the Commission cannot sit as a "super-personnel department" over the Employer's decision, see Dale v. Tribune Company, 797 F.2d 458, 464 (7th Cir. 1987). Rather, the Commission looks to see if there is evidence of a good faith, non-discriminatory basis for the Employer's decision at the time it made its decision, even if that decision was ultimately based on "erroneous facts." See Carlin v. Edsal Manufacturing, IHRC, ALS No. 7321 (May 6, 1996), *citing* Homes and Bd. of Cty. of Comm. Morgan County, 26 Ill. HRC Rep. 63 (1968). In this case, there is evidence the Employer had a "good faith" basis for its decision. Although the Petitioner speculates that other former employees were discharged by the Employer because of their age, there is no substantial evidence in the file that unlawful age discrimination was the motivation for the Petitioner's discharge.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Miramed Revenue Group, LLC, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 27th day of January 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini